

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5951

PETITION OF RANDOLPH T. AND LEE M. ROYEN

(Hearing held January 14, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, March 12, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(2)(c). The existing accessory structure/shed requires a 10.67 foot variance as it is within 1.33 feet of the side lot line. The required setback is twelve (12) feet.

The subject property is Lot 30, Block 6, Parkside Estates Subdivision, located at 16815 Betharyres Road, Derwood, Maryland, 20855, in the R-200 Zone (Tax Account No. 00789734).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The existing 10 x 15.9 foot accessory structure/shed is located in the property's eastern side yard.
2. The petitioner testified that the shed was built to replace an existing, crumbling and non-rebuildable shed located in the southeast corner of the property. The petitioner testified that he did not obtain a building permit because he was replacing an existing structure and was unaware of the required setbacks.
3. The petitioner testified that the rear yard of his property has a large swale that runs through the center of the lot and that it prevents new construction in other areas of the property. The petitioner testified that the property's shape also prevents new construction in other areas of the property and that the existing trees and vegetation would have to be removed if the shed were to be located elsewhere on the lot. The petitioner's lot is 23,207 square feet.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that while the shape of the petitioner's lot is distinctive, it is a characteristic shared with neighboring Lot 29 and other lots in the neighborhood. See, Exhibit No. 8 (zoning vicinity map). The Board further finds that the property has no exceptional topographical or other conditions peculiar to the property that are not mutually shared with the neighboring and adjoining properties.

The Board notes that the petitioner's lot exceeds the lot size for the zone and that new construction could be built in other areas of the property without the necessity of a variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of 10.67 feet from the required twelve (12) foot side lot line setback for the existing accessory structure/she is denied.

The Board adopted the following Resolution:

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 12th day of March, 2003.

Katherine Freeman

Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.